

2:13-cr-364-JAD-GWF - April 7, 2015

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3
4 UNITED STATES OF AMERICA,) Case No. 2:13-cr-364-JAD-GWF
5 Plaintiff,)
6 vs.) Las Vegas, Nevada
7 CLIFFORD JAMES SCHUETT,) April 7, 2015
8 Defendant.) 10:32 a.m.
9)
10) IMPOSITION OF SENTENCE
11)
12) **C E R T I F I E D C O P Y**
13)
14)

10 REPORTER'S TRANSCRIPT OF PROCEEDINGS

11 BEFORE THE HONORABLE JENNIFER A. DORSEY,
12 UNITED STATES DISTRICT JUDGE

13
14 APPEARANCES:

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United States District Court
333 Las Vegas Boulevard South, Room 1334
Las Vegas, Nevada 89101

23
24 Proceedings reported by machine shorthand, transcript produced by
25 computer-aided transcription.

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1 LAS VEGAS, NEVADA; TUESDAY, APRIL 7, 2015; 10:32 A.M.

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3 P R O C E E D I N G S

4 COURTROOM ADMINISTRATOR: All rise.

5 THE COURT: Good morning. Please have a seat.

6 COURTROOM ADMINISTRATOR: Case No. 2:14-cr-364-JAD-GWF,
7 United States of America versus Clifford James Schuett. This is
8 the date and time set for the imposition of sentence.

9 Counsel, if you would state your appearances, please.

10 MR. SMITH: Good morning, Your Honor. Phillip Smith
11 appearing on behalf of the United States.

12 THE COURT: Good morning.

13 MS. LEVY: Good morning, Your Honor. Rebecca Levy for
14 the defendant. He's present. He's in custody, Your Honor.

15 THE COURT: Good morning to you.

16 And good morning, Mr. Schuett.

17 THE DEFENDANT: Good morning, sir -- uh, ma'am.

18 THE COURT: All right, Mr. Schuett. This is the hearing
19 set for the imposition of the sentence upon you in this case.

20 Back in December, you appeared before the Court. You
21 entered a plea of guilty to Threat to Kill or Cause Damage by
22 Explosive. I accepted your guilty plea and I adjudicate you
23 guilty of this charge.

24 Has everyone had a chance to review the Presentence
25 Investigation Report?

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1 MR. SMITH: Yes, ma'am.

2 MS. LEVY: Yes, Your Honor.

3 THE COURT: All right.

4 And, Ms. Levy, did you get a chance to review it with
5 Mr. Schuett?

6 MS. LEVY: Yes, Your Honor.

7 THE COURT: Any outstanding objections at this time?

8 MS. LEVY: No, Your Honor.

9 THE COURT: All right. Thank you.

10 Then let's go ahead and go through the Guideline
11 calculations.

12 I'll also just back up a bit and note that this is a
13 negotiated Plea Agreement. It's a written Plea Agreement. It was
14 a nonbinding agreement. Not binding on the Court; binding on the
15 parties, of course.

16 In the Plea Agreement, the parties anticipated that -- I
17 think they anticipated a level 15 based on my calculations.

18 MS. LEVY: That's correct, Your Honor. And we would be
19 asking for that, Your Honor.

20 (Brief pause.)

21 THE COURT: The Government -- part of the Plea Agreement
22 was that the Government could ask for an upward adjustment under
23 3553(a) or under 4A1.3(b)(1).

24 MR. SMITH: That's correct, Your Honor. And, for the
25 record, I believe it actually should have been 4A1.3(a)(1), not

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1 (b) (1). That was a typo. And, for the record, the Government is
2 going to ask for such an upward adjustment.

3 THE COURT: And the defendant would not seek a downward
4 adjustment under 3553 or 4A1.3(b) (1).

5 So that brings us then to the Guideline calculations in
6 the --

7 (Attorney-client discussion.)

8 THE COURT: -- PSR. The Base Offense Level was
9 calculated at 12. Do we agree that is accurate?

10 MR. SMITH: Yes.

11 MS. LEVY: Yes, Your Honor.

12 THE COURT: All right.

13 A two-level adjustment applied because the offense
14 involved more than two threats. It was a single threat
15 essentially against two United States federal judges.

16 Do we agree that two-level increase applies under
17 2A6.1(b) (2) (A)?

18 MR. SMITH: Yes, Your Honor.

19 MS. LEVY: Yes, Your Honor.

20 THE COURT: An additional four-level increase was applied
21 under 2A6.1(b) (4) (A) because this offense resulted in substantial
22 disruption of government functions or services. In fact, in this
23 case it was a bomb threat against two federal judges in this
24 courthouse that did result in a need to sweep and clear the
25 building. That was a four-level increase.

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1 Do we all agree that applies?

2 MS. LEVY: Yes, Your Honor.

3 MR. SMITH: Yes, Your Honor.

4 THE COURT: All right.

5 I find that those both apply, paragraph 28 and 29, the
6 two-level and the four-level apply, based on the evidence and a
7 preponderance of the evidence.

8 Then that brings us to the victim-related adjustment.

9 This is the one not contemplated by the Plea Agreement. Probation
10 applied a six-level increase because the victims were government
11 officers or employees and the offense of conviction was motivated
12 by such status and the applicable Chapter 2 Guideline is from
13 Chapter 2, Part A, Offenses Against the Person. And so the
14 six-level increase was applied 3A1.2(b).

15 Mr. Smith, what's the Government's position on the
16 application of the six points?

17 MR. SMITH: Your Honor, pursuant to the Plea Agreement,
18 the Government is not going to affirmatively seek that the Court
19 applies that enhancement.

20 THE COURT: Ms. Levy, your position?

21 MS. LEVY: Our position is the same, Your Honor.

22 THE COURT: Okay.

23 (Brief pause.)

24 THE COURT: All right. Well, with the additional six,
25 the -- and I'll go back to whether I'm going to apply that or not

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1 in a minute -- Probation got an Adjusted Offense Level of 24. It
2 then applied the three-level decrease under 3E1.1(a) and (b).

3 Mr. Smith, does the Government move for that third point?

4 MR. SMITH: Yes, ma'am. At this point, yes.

5 THE COURT: On what basis?

6 MR. SMITH: The Government didn't have to prepare for
7 trial; the parties engaged in plea negotiations relatively
8 quickly; and, in fact, this case was resolved via a pre-indictment
9 plea. So I didn't even have to present the case to the Grand
10 Jury.

11 THE COURT: Okay. All right. Then I find that the full
12 three points apply under 3E1.1(a) and (b).

13 So then, when Probation applied that, they got a 21
14 because they had applied the victim-related adjustment.

15 Criminal history computation is on page 20. Probation
16 calculated a Criminal History score of 10 which establishes a
17 Criminal History Category of V.

18 Do we agree that's accurate?

19 MS. LEVY: Yes, Your Honor.

20 MR. SMITH: Yes, Your Honor.

21 (Brief pause.)

22 THE COURT: The maximum term of imprisonment on this
23 offense is 10 years; the maximum term of supervised release is
24 3 years; the maximum fine is \$250,000; and the special assessment
25 of a hundred dollars is mandatory.

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1 Probation, because they calculated the Total Offense
2 Level to be a 21 with a Criminal History Category of V and that's
3 a range of 70 months to 87 months, is recommending the high end,
4 at 87 months.

5 (Attorney-client discussion.)

6 THE COURT: All right. I'm gonna reserve my Guideline
7 calculation determination till after I hear argument.

8 Mr. Smith.

9 MR. SMITH: Your Honor, the Government is going to
10 respectfully request that the Court either apply an upward
11 departure or an upward variance pursuant to either 4A1.3(a)(1) or
12 3553 to achieve a sentence of 87 months. The Government is
13 cognizant that the statutory maximum is 120 months. And so,
14 therefore, I know that I can actually ask for a sentence of 120
15 months. But I believe that a sentence of 87 months, nevertheless,
16 achieves the statutory sentencing objectives.

17 I'm asking for the upward departure based on the in- --
18 excuse me -- the inadequacy of Criminal History Category because,
19 as the Court very well knows, the PSR calculated Mr. Schuett's
20 Criminal History Category at V. I submit that that
21 substantially --

22 | THE COURT: Understates?

23 MR. SMITH: -- understates his criminal history given
24 that Mr. Schuett has, by my count, a total of 10 -- I repeat -- 10
25 separate felony convictions that didn't even register any Criminal

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1 History points. He also has a misdemeanor conviction that did not
2 result in any Criminal History points.

3 So we have a total of 11 convictions, 10 of them very
4 serious offenses, where he did not get any Criminal History
5 points. To the extent that if he had received Criminal History
6 points for even one of those convictions, he would likely be in a
7 Criminal History Category of VI.

8 Mr. Schuett's Criminal History Category is predicated on
9 only two felony convictions and one misdemeanor conviction. So
10 that is approximately, by my count, a little bit over 10 percent
11 of his entire criminal history is actually being counted towards
12 his Criminal History Category. So, to that extent, I believe that
13 that satisfies the provisions in 4A1.3(a)(1) as a standard for
14 upward departure and that there is reliable information that
15 indicates that the defendant's Criminal History Category
16 substantially underrepresents the seriousness of his criminal
17 history or the likelihood that the defendant will commit other
18 crimes. And the policy statements says an upward departure may be
19 warranted.

20 Turning back to the latter part of that statement --
21 i.e., the likelihood that the defendant will commit other
22 crimes -- that actually ties not only into the 4A1.3(a) argument
23 I'm going to make but it also ties into the 3553 argument that I'm
24 going to make in that Sections 3553(2)(a), (b), and (c), instruct
25 the Court to impose a sentence:

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1 with regard to Section (a), to reflect the seriousness of
2 the offense; to promote respect for the law; and to provide just
3 punishment for the offense;

4 subsection (b), which I submit might be the most
5 important consideration here, respectfully, is to afford adequate
6 deterrence to criminal conduct; and

7 subsection (c), actually, I submit is equally as
8 important, to protect -- excuse me -- to protect the public from
9 further crimes of the defendant.

10 And, again, I submit that that meshes with the Guideline
11 policy for the Court to consider whether -- excuse me -- the
12 likelihood that the defendant will commit other crimes.

13 This is a person who, for whatever reason, decides to
14 commit serious federal crimes in order to go back into prison.
15 And, as I respectfully reminded the Court when Mr. Schuett pled
16 guilty, the Government is understanding that there may be some
17 mental issues with Mr. Schuett. But the fact remains that the
18 crime that he stands convicted of today is a very serious offense.
19 I mean, he threatened to kill two federal judges. And it
20 wasn't -- it was an idle threat to the extent that there weren't
21 any bombs actually placed in the courthouse. But it was not an
22 idle threat to the extent that it engendered a response from the
23 Marshals. These are things that have to be taken seriously.

24 And I'd ask the Court to keep that in mind in considering
25 that he committed this offense in a very short period of time

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1 after he committed a similar offense that was actually more
2 serious, specifically for the record, when he threatened to blow
3 up things at Nellis Air Force Base which, by my recall, caused a
4 tremendous response from the authorities. They actually had to
5 shut the base down.

6 Then I'd ask the Court to consider the fact that even
7 after being arrested for this offense, Mr. Schuett continued to
8 write letters threatening the President of the United States; the
9 same two district judges again; another federal courthouse in
10 Honolulu; Nellis Air Force Base; the Secret Service; and an
11 Assistant United States Attorney.

12 I submit that if the Court looks at Mr. Schuett's
13 criminal history; his motivation not only for committing the
14 previous offense where he went to prison for, where he served 42
15 months of imprisonment followed by 3 years of supervised release;
16 and his motivation for committing this offense, it stands to
17 reason that he will commit another offense again once he gets out
18 of custody.

19 So the likelihood that he will commit other crimes is
20 high. I submit that that should give the Court a sufficient
21 enough reason to in fact impose a sentence higher than the
22 Guideline range that Ms. Levy and I agreed to because it will
23 hopefully afford adequate deterrence to criminal conduct on the
24 part of Mr. Schuett and that if the Court gives Mr. Schuett a
25 lengthy sentence he may think again before haphazardly threatening

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1 to kill a federal judge or prosecutor or disrupting the Nation's
2 National Defense Network by causing problems at a military
3 installation here, perhaps he may think twice about doing that;
4 and it will also protect the public from further crimes of the
5 defendant because this is a crime that in fact affects the public
6 even if it's directed towards a particular person, in this case
7 two federal judges.

8 So, for those reasons, I do submit that an 87-month term
9 of imprisonment is sufficient yet not greater than necessary.

10 The Guideline range that the parties agreed to, by my
11 calculation, comes out to 37 to 46 months. If the Court imposed
12 the high end of that sentence, that would only be a mere four
13 months longer than the prior sentence he received for the same
14 conduct.

15 And in my humble opinion, Your Honor, if a person commits
16 the same violent crime again, they should get a substantially more
17 serious sentence. And that's why the Government reserved the
18 right to specifically ask the Court to impose a sentence higher
19 than the Guideline range than the parties anticipated.

20 I submit that there can be no question -- strike that --
21 I submit that there should no question in the Court's mind that
22 Mr. Schuett is going to commit another offense like this again.
23 Previously he indicated that he would do whatever he had to do to
24 get in federal custody.

25 Now, I know that through Mr. Schuett's prolific pro se

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1 motion practice that it appears that he has some sort of buyer's
2 remorse -- and a lot of criminals do so -- but I submit that the
3 Court should not overlook and not underestimate the seriousness of
4 this man's conduct; the likelihood that he is going to commit a
5 similar offense, if not the exact same offense again; the
6 likelihood that he is going to cause a disruption to essential
7 services -- either the Nation's National Defense Network or the
8 Nation's Criminal Justice System -- and, for that reason, I
9 respectfully request that you imposed a sentence that is much
10 lengthier than the Guideline range that we agreed to. If for no
11 other reason to protect the public from future crimes or to impose
12 adequate deterrence to Mr. Schuett so that finally he may not
13 commit any further crimes.

14 Given the fact that this is now his 13th felony
15 conviction, I submit that something should be done to hopefully
16 stem the tide of Mr. Schuett's criminal conduct, especially given
17 that his conduct is affecting other people and innocent victims,
18 not only federal officers but also the taxpayers.

19 And, with that, I'd submit it. However, Your Honor, I
20 would respectfully reserve the right to make another statement if
21 Mr. Schuett makes a statement that constitutes a material breach
22 of the Plea Agreement.

23 (Attorney-client discussion.)

24 THE COURT: Understood.

25 (Attorney-client discussion.)

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1 THE COURT: Give me just a minute.

2 (Pause in the proceedings.)

3 THE COURT: Ms. Levy.

4 MS. LEVY: Your Honor, my client wishes to address the
5 Court first if that's acceptable with the Court.

6 THE COURT: Yes.

7 Mr. Schuett, I think I told you at your plea hearing that
8 at your sentencing that you would have the opportunity to address
9 me directly and to provide me with any information you think I
10 should consider in deciding what the appropriate sentence is for
11 you in this case. This is your chance, sir.

12 THE DEFENDANT: It's okay to talk now?

13 THE COURT: Yes.

14 THE DEFENDANT: Okay.

15 Well, I can understand what the D.A. right here says is
16 that I possibly would commit a new crime. I would just like to
17 stress -- let's say -- my crimes, he says they are violent. I've
18 never committed a violent act in my life, except threats. I've
19 never committed a gun [sic]. Like it says in the PSI, I'd go
20 after a rifle. How am I supposed to shoot one when you got no
21 money to even buy one?

22 When I got out -- the last four times I've gotten out of
23 prison, I've had no money; no place to live; nothing. They didn't
24 give me anything to come out with. That's the reason I went back
25 to the joint because medically I couldn't take care of myself on

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1 the street.

2 Now, since then I managed to get -- I've been -- my
3 Social Security's been restored -- well, it isn't right now. It's
4 in abeyance 'cuz I'm in jail again. But I can understand, you
5 know, they want to bury me. I'll never get out again -- I know
6 that -- if I get hit with 87 months. I won't live long enough to
7 do that. My health is deteriorating.

8 My main thing is I admit I wanted to go back to jail.
9 But I -- at least I might have a chance this time. The recidivism
10 [sic] rate, I don't know. I don't know how to deal with not
11 having medical stuff on the street. Maybe I can make enough money
12 this time to help me with my Social Security. Like I say, it's
13 been restored. I got Medicare. I got whatever -- that Obama
14 Care, whatever they call that stuff. You got to buy some kind of
15 insurance. I don't know what it is. But I've got Medicare. That
16 was approved. It was a little late in coming, so I didn't -- if I
17 would have waited an extra couple of days, I woulda had it and I
18 wouldn'ta had to do this stupid crime.

19 Most of the crimes over the past 10 -- well, when I got
20 out in -- I was 10 years clean when I was living here Vegas. I
21 never committed a crime. I didn't do anything. I held jobs when
22 I could work. It's just when everything started fallin' apart in
23 2010 -- when my mom died and a few things like that -- I had got
24 kinda left out in the cold. And I had no access to anything.

25 So it's been kinda like up and down hill. And I've

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1 reverted back to having to go back to prison 'cuz it's the only
2 way I could support myself. There's no way I can live on the
3 street. I mean, I got to have a certain amount of medical
4 supplies and I didn't have the money for that stuff. Social
5 Security was doin' whatever they were doin', you know, for a
6 reconsideration. And then they went ahead and violated me and
7 sent me back because, you know, supposedly [sic] I was supposed to
8 report and I didn't make it there because I had a flat tire in my
9 wheelchair.

10 Now, currently -- like some of my medical issues that are
11 comin' on, my left arm's messed up and there's been -- there's
12 some other things that maybe needs to be taken care of in BOP, not
13 here. But I request strongly not to spend the rest of my life in
14 prison. I mean, you know, I think I still can be a productive
15 citizen in something. I mean, like I say, I spent 10 years out
16 and I did -- I did attempt something to do something.

17 Now, going after these -- makin' these threats to the
18 judges and things like that, because I thought I would be kicked
19 out with nothin' again. And that's one reason -- I figured that
20 would keep me in prison, committin' something like this. It's
21 better than goin' out and tryin' to do something even stupider and
22 hurtin' people. I never -- I never intended to hurt anybody.
23 Sure, I made a threat and things like that. I figured, yeah, I'd
24 shake the courthouse a little bit. You know, maybe you had to
25 leave the courtroom for whatever period of time or somethin' like

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1 that. But nobody really got hurt. My intention was not to hurt
2 anybody. That's why I made a stupid threat like that.

3 And as far as the -- what the D.A. says here, writin' the
4 President of the United States and all that other stuff, I learned
5 a long time ago when you commit something like this that it's --
6 sometimes it's best to write a few more. I was wrong in doing
7 that. But I'd still --

8 THE COURT: Well --

9 THE DEFENDANT: -- like to have --

10 THE COURT: -- what do you mean by that? Sometimes it's
11 best to what?

12 THE DEFENDANT: Well, sometimes overreact and write; you
13 know, do something further. 'Cuz sometimes -- I've seen with some
14 judges they all -- you know, when you get sentenced or
15 somethin' -- that they give you a certain amount, whatever comes
16 on, BOP kicks me back out and I got nothin'. I'd rather like to
17 still try to make it on the streets, you know, but before I turn
18 70 years old. Like I say, I'm not gonna live long enough to live
19 maybe five more years anyhow.

20 But I don't want to die in prison. And I didn't commit
21 these crimes out of adverse to attack anybody or my country. I'm
22 not crazy. I'm not gonna pick up a gun and shoot a federal judge.
23 That's insane. I mean, if I was -- if I'm considered insane, why
24 am I not goin' to a nuthouse? I'm not insane. I'm not crazy.
25 I'm not professing to be crazy. And there's no way I'm gonna

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1 attack a federal judge. That's insane.

2 Like I say, I did this basically under the assumption
3 that, you know, it would quickly get me back in prison. But
4 that's not gonna achieve anything either by goin' to prison. I'm
5 not -- I'm not achievin' anything; I'm not -- I'm not productive
6 at anything. I'm sittin' there doin' nothing. At least on the --
7 if I did make it back on -- I understand you're gonna have to send
8 me to prison for some time. I understand that. But this 8 years
9 I think is a little -- really a little bit stiff.

10 I mean, like I say, I have -- I've never committed a
11 violent crime as far as enacting of a violent crime. None of
12 my -- none of my -- none of my crimes are violate at all. They
13 are all property offenses or these -- these stupid threats. I've
14 never committed an act of violence. And I don't know where he's
15 comin' from with all this rhetoric that I've committed a violent
16 crime. I didn't -- I didn't attack anybody. I've never used a
17 weapon. I don't have the -- even the qualifications to handle a
18 weapon.

19 And, at the time when I -- when I committed this crime, I
20 was already -- there was no way I could, you know, have access to
21 a gun. I had no money anyhow. I didn't even have enough money to
22 eat on when I came out of the joint.

23 And then, when I did come out last time under parole, I
24 told 'em then before I didn't wanna come out because I didn't want
25 to be stuck in a situation where I couldn't handle to take care of

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1 myself. I come out. The parole officer says, oh, yeah, the
2 parole -- parole people help ya. They helped me all right; right
3 into a shelter where I got robbed the first night.

4 That's no way to live, but it's -- it's still better than
5 livin' in jail. At least with some Social Security -- I don't
6 know how much it is. I think it's about a thousand bucks a
7 month -- that's enough to -- with Section 8, I can get housing or
8 something. But it's better than sittin' in jail.

9 I know if I'm productive, I'm doin' somethin' I'm not
10 gonna commit another crime. The only time I did these was because
11 I was in a situation where I couldn't deal with, you know, not
12 workin' or whatever you want to call it. I know I've been kind of
13 a loon with all these stupid court things and stuff like that.
14 But that's -- I was being attacked in CCA medically. And it's --
15 it's become -- it's become a serious problem now. But that --
16 that doesn't still warrant -- warrant me havin' to, you know, like
17 I say, bother the Court which I have. I have apologized for
18 writes -- numerous motions or whatever. I tend to get a little
19 rattled sometimes. But I apologize for that.

20 You know, like I say, I don't know -- I don't know what
21 to do. I mean, you know -- I know you're gonna send me to the
22 can. I accept that. I will -- you know, if I have to do 87
23 months, if I live long enough, I'll do it. I'll come out and do
24 parole again. But, by then, I don't know what I'll have to do for
25 Social Security. They're gonna -- they're gonna make me redo and

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1 that's gonna take 2 years. I'll come out with nothin' again.

2 At least now at least I have some semblance -- I don't
3 care what this man says. If he says I'm breakin' policy or
4 breakin' this -- this -- this violation, I would request you
5 release me today. I don't care what he says. But I know you're
6 not gonna be able to. I know I have to do some time. I
7 understand that. I'd committed a crime. I -- I -- I agree. I
8 need to be punished, whatever reasons for it. You know, like I
9 say, he can object all he wants. You know, I could really care
10 for less. I committed a crime. I'm willing to do the time for
11 it.

12 But at least -- I would like to have at least a chance to
13 come back out before I'm -- like I say, I'm deceased or in the
14 ground or whatever you want to call it. I think I could still
15 make an -- make an advent. I'm 60 years old. I mean, I gotta
16 some kind of wisdom. And I'm not gonna -- I'm not gonna preach
17 that -- you know, God and all this other stuff. I believe in God,
18 yes, and all this other -- you know, and I pray a lot. But I'm
19 not gonna use that as a mode to get out of prison.

20 I admit I committed a crime; I'll pay the price. But 87
21 months, I mean, that's -- like I say, that's a little stiff. I
22 mean, I didn't -- like I say, I have never committed a violent
23 crime outside of the threats or anything. You know, he's comin'
24 off saying I'm -- you know, I'm gonna shoot a federal judge; I'm
25 gonna do this and that. How? With what? I have nothing to do it

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1 with. I have no intention in reality to shoot a federal judge
2 that -- like I say, it's insane. And I'm not -- I'm not a crazy
3 person. I think -- I think a certain -- excuse me. My wording
4 might be a little wrong and stuff like this.

5 THE COURT: You're doing fine, Mr. Schuett.

6 THE DEFENDANT: But I don't believe sittin' in prison for
7 the rest of my life's gonna, you know, achieve anything.
8 Actually, it's gonna be more of a direct waste of the Court's time
9 and it's gonna be a waste of puttin' me in prison, taxpayer's
10 money, 'cuz it's gonna cost a fortune just in medical just to --
11 just to -- just to house me alone.

12 And, I mean, right now the courts are so tied up with all
13 these other, let's say, more serious offenders. I mean, sure, I
14 admit -- you know, I come -- like I say, made threats; whatever.
15 I know they were wrong, but -- or say that I did it; I will do the
16 time for it. But I don't want to -- you know, it doesn't make any
17 sense to go do it for the rest of my life.

18 And I -- I -- I believe strong in my heart if I had --
19 had a chance, you know, in making it -- I just never -- the last
20 four times, I never got the chance to do it. I come outta prison;
21 I got nothin'. I mean, they don't even give you gate money
22 anymore. I wasn't allowed to work in there because of my medical,
23 my last four times in. I -- you know, I did some side work and
24 stuff like that for other inmates. But that's not enough where
25 you can make -- you know, save any money up. I wasn't allowed to

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1 work at all. So I couldn't save money. And, you know, like I
2 say, they don't give you gate money when you come out anymore.
3 They ain't got it or they -- they keep sayin', well, we have no
4 money 'cuz we're sorry to say that the courts are sendin'
5 everybody to prison. So there's more inmates than they have jobs.

6 I plan to, while I'm in, talk to the shrinkers, which I
7 didn't do before. I believe I do have a mental issue. There --
8 there's no doubt about it because I don't react -- when I'm
9 threatened, I react very adversely [sic] but not violent. I just
10 don't make decisions right.

11 I might even attend -- I have -- I do have a drinking
12 problem. I -- I admit when I was out on the street this time I
13 went back to drinkin' again. But it is a problem. And it's
14 somethin' that I need to eradicate 'cuz I can't afford to be
15 drinkin'. And that alcohol will kill ya just as fast as prison.

16 And they got the programs in there. So I'm willin' to at
17 least -- at least attempt to try to do somethin'. I tried to get
18 the RDAP Program last time I was in -- well, time before last. I
19 didn't complete it. I was almost at graduation of it and there
20 was a problem at Terminal Island when I was there and I got -- I
21 was attacked by another person and had to defend myself. And that
22 got me sent to the United States Penitentiary at Beaumont. I
23 don't want to end up havin' a situation like that again.

24 But I'd just like to have at least a chance, you know, at
25 some life future down the road. And if this -- if this -- if

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1 Mr. Smith thinks I'm tryin' to get out of his plea bargain, I'm
2 not trying to get out of his plea bargain, but I think 87 months
3 is a little bit stiff. I mean, for -- I admit, yeah, sure things
4 happened and things were erratic -- you know, people were messed
5 up and their lives were overturned. I apologize for all that.
6 But, like I say, it wasn't intentional to commit -- or hurt
7 anybody. I had no intentions of hurting anybody. And that's why
8 I didn't commit anything -- you know, I -- I talked to friends
9 about this and they say, well, you ought to go rob a bank or you
10 should go rob a post office or do something really stupid. And I
11 said: Why? Why should I threaten somebody when I can do just
12 somethin' -- a crummy threat? That way there's -- really nobody's
13 being hurt. I'm not physically -- and I've never in any of my
14 crimes hurt anybody. All my crimes have either been nonviolent or
15 they've been property-related, penny ante most of 'em. But that
16 type of thing.

17 And I'm not -- like I say, I am -- I'm remorseful for
18 what I did. I was wrong. It was the wrong way to do it. Maybe
19 by -- by this last time there wasn't much I could do. I didn't
20 have a parole officer to go to anyhow since I was -- I was taken
21 off parole this last time. So I didn't know what to do; really
22 what to do. Usually I would just go back to the parole office
23 and, you know, kinda go through that. But I didn't have no parole
24 officer to go through.

25 And there was nowhere -- there was nowhere -- nowhere

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1 else to return to. I had no family left. My -- all my people are
2 dead. So I have nowhere really to turn. So I just reverted to
3 what I knew best, was to make a threat. It was the easiest way to
4 go back to prison.

5 THE COURT: I understand.

6 THE DEFENDANT: And at the time, like I say, you know,
7 I -- I've got -- I've got access to Social Security and stuff.
8 It's there. It can be reinstated. But, if I'm like doin' over
9 5 years, it'd be a waste of time. It'll take 2 to 3 years to
10 reactivate it. It's just too long being in prison. And, if I
11 come out again with nothin', I'm still stuck in the same boat and
12 I'll be 67, 68 years old and probably not be able to even roll my
13 stuff around -- roll myself around. I'm havin' a hard time doin'
14 that with my left arm now, which they think physical therapy's
15 gonna do, but it's not a physical therapy problem. It's -- it's
16 a -- it's a crushed disc that's causing compression on a nerve
17 which is gonna take surgery. Physical therapy isn't gonna do it
18 because it's causing paralysis. And that was told by the CCA
19 doctor.

20 So, I mean, it's a situation -- I'm gonna get older. I
21 know that. I come out again, I'm just gonna be in the same shape
22 unless I have something to come out to. And at least I've got
23 some semblance of Social Security. It is -- it is there. It's
24 somethin'.

25 THE COURT: All right.

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1 THE DEFENDANT: But at 5 years, 6 years, it's -- I'll
2 be -- I'll just be older and come out with the same problem again.

3 THE COURT: I understand --

4 THE DEFENDANT: And it's -- I'd rather at least attempt
5 to try something at life again. I mean, you know, I don't want to
6 come back -- if I do come back out and it is short, I don't want
7 to come back to Las Vegas. That's for dang sure. I'd go
8 someplace else. But at least I'd like to at least request and
9 pray for the chance.

10 THE COURT: I understand, sir.

11 Is there anything else that you think I should consider,
12 Mr. Schuett?

13 THE DEFENDANT: Nah, I don't want to draw it out. I know
14 you're busy and you got other people to deal with. It's just
15 sometimes, like I say, I get drawn out. And you notice by some of
16 my writings I get a little -- a little rambunctious.

17 But it's -- like I say, I apologize for all that stuff.
18 It's -- you know, you get old like me, you get erratic; you get
19 crazy, you know.

20 But I am requesting a reduced sentence. And Mr. Smith
21 can do what he wants. He can throw the book at me or raise -- get
22 God to throw lightning bolts at me. But I'm gonna -- I'm gonna
23 make the request. Thank you.

24 THE COURT: All right. I understand your position.

25 Thank you.

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1 Ms. Levy.

2 MS. LEVY: Your Honor, if I may, I just want to touch
3 upon some more of the legal arguments the Government made. Just
4 briefly.

5 The Government made an argument which, of course, they
6 are allowed to do pursuant to the Plea Agreement regarding my
7 client's criminal history being over -- being understated. I
8 would disagree with that characterization of my client's criminal
9 history. It appears -- my client's 60 years old right now. It
10 appears that the last time he committed an offense that was an
11 offense besides committing an offense to go to federal prison. So
12 he committed offenses with the intent, which is very obvious, to
13 go to federal prison.

14 Outside of that, the last time he committed an offense
15 was when he was 31 years old. So it's been a significant amount
16 of time since he has committed an offense except for those which
17 the sole purpose is to go to federal prison. And that's clear
18 because he picks federal facilities or steals from federal
19 facilities with the sole purpose of trying to go back to prison.
20 He told the officers in this case that's why he was committing the
21 offense. He was very clear; repeated it over and over again: I
22 just want to go to federal prison. I just want to go to federal
23 prison.

24 So it appears that the Guidelines are actually
25 appropriately calculating his criminal history here. Because the

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1 age of all of the other prior offenses are over 30 years old, it
2 appears appropriate that they are not qualifiers for Criminal
3 History points. And the only Criminal History points that he has
4 are from the recent threats.

5 After this offense, he would now qualify, if he commits
6 another offense similar to this one, as a career offender because
7 they are recent enough that they garner points. So, again, I
8 think that bodes in the favor of the idea that his Criminal
9 History Category is appropriately contained within a Criminal
10 History Category of V because if he comes out again and commits
11 the same offense he would then be a career offender based upon his
12 criminal history. So it does appear to capture his criminal
13 history appropriately.

14 The Guideline that we agreed to was 37 to 46 months, and
15 so that appears to be a more appropriate number in this case for
16 Mr. Schuett.

17 In terms of the deterrence that the Government discusses,
18 it's a little -- it's sort of a difficult argument to make; it's
19 kinda of a catch-22: Send him to prison for a long time to deter
20 him from trying to commit an offense to go to prison for a long
21 time. So I don't exactly know how to formulate a counterargument
22 to that. But, for Mr. Schuett, deterrence doesn't appear to be an
23 appropriate 3553(a) factor when you look at the sentencing
24 requirements.

25 And I would leave it at that, Your Honor.

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1 (Attorney-client discussion.)

2 THE COURT: Ms. Elwess, does Probation have anything else
3 to add?

4 MS. ELWESSION: No, Your Honor.

5 MR. SMITH: Your Honor, I do have something else to add
6 if the Court would indulge me.

7 THE COURT: Yes, Mr. Smith.

8 MR. SMITH: There are a couple of things that I would
9 like to respond to that Mr. Schuett just stated, the first being
10 that he's never committed a crime of violence other than these
11 crimes which he wants to minimize. That's actually not true.

12 Paragraph 44 lists an Attempted Robbery conviction where
13 the reports indicated that he was hitchhiking outside of Tacoma,
14 Washington. When a woman stopped to give him a ride, he pulled a
15 knife; placed it at her throat and demanded money. He was
16 convicted of that and went to prison for 5 years. That's a crime
17 of violence. So he can't say he's never committed a crime of
18 violence because he has.

19 Also, Mr. Schuett spent a lot of time saying that, well,
20 now I can get Social Security. So give me a chance, Judge. Don't
21 give me a long period of time.

22 But the conviction listed in paragraph 50 where he stole
23 from Travis Air Force Base he said the same thing. The PSR says:
24 At the time of this offense, the defendant stated he committed
25 this offense because he was homeless and had no source of income.

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1 The defendant stated since he committed this act he has been
2 granted Social Security benefits and can now sustain a lifestyle
3 outside of prison.

4 But then, after he got out of prison, that's when he then
5 committed the offense where he threatened to blow up Nellis Air
6 Force Base. So now he's here saying, Judge, give me a reduced
7 sentence because now I'm on Social Security and I can survive.
8 That's the same thing he said two federal convictions ago and now
9 here we are again. So you can't believe a thing that this man
10 says, Your Honor.

11 Also, he continues to minimize this offense because it's
12 just a threat. No big deal; right? No big deal. That's not
13 true. As the PSR points out, threats are not victimless crimes.
14 They not only affect the recipients; they also impact the people
15 who work near the recipient and the recipient's loved ones. In
16 addition to the fear that the threats create, they also have an
17 increased financial impact. And increased technological and
18 personnel court security measures are expensive and are ultimately
19 paid for by the taxpayers.

20 So you can't believe a thing he says because he just lied
21 to the Court and said he's never committed a crime of violence,
22 which he has. I submit attempted robbery where you place a knife
23 to a woman's throat is a crime of violence.

24 You can't believe him because now he's saying I'm not
25 gonna do it again because I have Social Security benefits. He

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1 said that some three -- two convictions ago. But he's now
2 committed two additional offenses and these are crimes of
3 violence. As Ms. Levy has pointed out, if he does it again, he's
4 a career offender.

5 And, again, the crimes are serious. And that's why I'm
6 respectfully requesting that the Court impose an upward variance
7 or an upward departure.

8 THE COURT: Ms. Levy, did you want to respond to those
9 points?

10 MS. LEVY: I don't, Your Honor.

11 THE COURT: Thank you.

12 All right. Then is there any reason why I should not --
13 any reason, legal or just, why I should not proceed with
14 sentencing at this time?

15 MS. LEVY: No, Your Honor.

16 MR. SMITH: No, Your Honor.

17 THE COURT: All right. I'm going to start with the
18 Guideline calculations and -- so I'm on page 9 of the PSR.

19 I agree that the Base Offense Level is 12. I find that
20 the specific offense characteristics in paragraphs 28 and 29,
21 which have a two-level and four-level upward adjustment
22 respectively, are supported by a preponderance of the evidence.

23 And that leaves me with paragraph 30, which is the
24 victim-related adjustment. It's a six -- Probation applied a
25 six-level increase because the victims were government officers --

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1 they were in fact U.S. District Judges -- and the offense of
2 conviction was motivated by the fact that they are federal judges
3 and the applicable Chapter Two Guidelines, from Chapter Two, Part
4 A - Offenses Against The Person. So then 3A1.2(b) would apply and
5 would require an increase by six levels under the Guidelines.

6 Looking at that adjustment, I do understand that the
7 parties agreed not to pursue that in their stipulations in the
8 Plea Agreement. The Plea Agreement in that respect certainly is
9 not binding on me. So the question for me is whether I have a
10 preponderance of the evidence to support the application of that
11 factor. And, when I look at the facts in the Plea Agreement, I
12 think I do have that preponderance of the evidence in the Plea
13 Agreement.

14 And I recall the discussion I had with Mr. Schuett at the
15 plea hearing as well. But he admitted that during a post-Miranda
16 interview he stated: I am threatening to blow up two federal
17 judges. The first was that he wanted to blow up the judge with
18 the initials R.H. because he sent him to prison and the judge with
19 the initials J.M. because he turned down his court case. And he
20 said, if I get out of county jail, I will shoot a federal judge
21 and that he would go off the judge with the initials R.H. first.
22 So I think it's clear that I have more than a preponderance of the
23 evidence to support the application of those additional
24 six-level -- that additional six-level increase under 3A1.2(b).

25 And, when I weigh that against the policy to support

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1 negotiated plea deals, I think that I'm going to apply the
2 six-level increase and find that in the calculations here that the
3 six-level applies under 3A1.2(b) and that gives me ultimately a
4 Total Offense Level of 21. So then the Guideline calculations
5 under that, with a level 21 and a Criminal History Category of V,
6 I find that is accurate, the Criminal History Category of V.

7 The Guideline provisions are a range of 70 to 87 months,
8 supervised release of 1 to 3 years, a fine range of 7,500 to
9 75,000, and the special assessment of a hundred dollars applies.

10 So does everyone agree that if I -- as I have now
11 concluded that the Guideline calculation is a level 20 with a
12 Criminal History Category V that those are the ranges?

13 MS. LEVY: Yes, Your Honor.

14 MR. SMITH: Yes, Your Honor.

15 MS. LEVY: We're just gonna object to that -- the --

16 THE COURT: Application.

17 MS. LEVY: That's correct, Your Honor.

18 THE COURT: I understand that.

19 And the basis for your objection?

20 MS. LEVY: Is that we don't believe that it applies in
21 this particular case, Your Honor.

22 THE COURT: And why not?

23 MS. LEVY: Because the intent that -- it's our position
24 that it is not applicable in this because the Government is not
25 putting on evidence to prove that the offense of conviction was

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1 motivated by the status of the person being a federal judge.

2 THE COURT: All right.

3 And I understand your position and I think that the
4 statements in the PSR and the statements made at the -- or not in
5 the PSR -- in the Plea Agreement and made at the plea hearing
6 support that finding. So that's why I find that the six levels
7 apply under that provision. I think it seems very clear to me
8 that the whole point of this was that they are federal judges and
9 that is why those threats were made.

10 Now -- so then the range I'm working with is 70 months to
11 87 months. And, of course, we all recognize that the Guidelines
12 are only advisory on the Court -- I recognize that -- and my real
13 goal is to apply all of the factors under 3553(a) to determine the
14 just sentence in this case.

15 So I first want to note that I feel like I've really
16 gotten to know Mr. Schuett over the course of this prosecution.
17 Even though this is a 2014 case, I think Mr. Schuett has been a
18 prolific writer in this case --

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: -- and so I certainly have gotten to know a
21 lot about Mr. Schuett in his communications, his filed
22 communications, with the Court.

23 And I -- Mr. Schuett, I want you to understand: I do
24 hear you. I have listened to you. And I understand your
25 positions here. I understand that you engaged very calculated

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1 acts in order to get yourself back to prison. And I know that is
2 not the first time that you've done this; this has been a number
3 of times that you've done this. As Mr. Smith notes, this is your
4 13th felony conviction. So you're a habitual recidivist,
5 essentially, and you acknowledge you need some treatment for sure.

6 THE DEFENDANT: Hmm.

7 THE COURT: But I think we've all acknowledged that we
8 think that some treatment would probably help you.

9 But, nevertheless, as you have repeatedly told me: This
10 was intentional. You did -- this was very calculated. You knew
11 what you were doing. You did it on purpose. And I understand
12 your statement that you didn't intend to hurt people and that
13 nobody really got hurt. But I also recognize that crimes like
14 this are not victimless crimes; they really aren't. They are very
15 disruptive. They create fear and anxiety. They do a lot of
16 things to society.

17 So I understand your position that you didn't use a gun,
18 you didn't have one to use, and so you didn't really intend to
19 actually shoot --

20 THE DEFENDANT: No.

21 THE COURT: -- a federal judge.

22 THE DEFENDANT: No way.

23 THE COURT: But you made threats that you would, if you
24 got out of jail, shoot a federal judge. And those are really,
25 really serious things to do. And I don't say that just because

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1 I'm a federal judge. I say that because threatening to kill
2 people is a very serious thing to do and threatening to disrupt
3 the justice system or the defense system are very serious, scary
4 things to do to society. And so I don't take this type of crime
5 lightly even though I understand your position that you really
6 didn't intend to physically harm someone. And I know you believe
7 that. I know.

8 And I also understand your position that your Social
9 Security has apparently been restored or close to restored. I
10 also understand Mr. Smith's position that this isn't the first
11 time that position has been made at sentencing. And, you know, I
12 get enough communications from you that I understand that
13 depending on the day sometimes you want me to delay your
14 sentencing so that I -- so that you stay where you are longer
15 or -- and your position just changes often. And I understand and
16 that's your prerogative.

17 THE DEFENDANT: It's basically medical issue. But, like
18 I say, I don't know where I'm gonna need to stay, up there when
19 I'm seeing doctors now or go back to BOP which it'll take about
20 another year to start this all over again.

21 THE COURT: Well, I'm hopeful that it won't take another
22 year to start --

23 THE DEFENDANT: I --

24 THE COURT: -- this --

25 THE DEFENDANT: -- hope not --

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1 THE COURT: -- all over --

2 THE DEFENDANT: -- either.

3 THE COURT: -- again. Yes.

4 THE DEFENDANT: I hope not either.

5 THE COURT: I'm hopeful that the Bureau of Prisons will
6 be able to manage your medical issues.

7 (Attorney-client discussion.)

8 THE COURT: And I can appreciate your requests now to not
9 spend the rest of your life in prison, but you've also told me
10 before that that was your whole goal. So I understand that
11 situations change for you and --

12 THE DEFENDANT: Yeah.

13 THE COURT: -- and the reasonings change from time to
14 time.

15 THE DEFENDANT: I cried wolf too many times.

16 THE COURT: Well, um...

17 And it's all of this that I have to consider. And part
18 of what I have to consider is -- you know, one of the factors
19 under 3553(a), subsection (d), is that I have to protect the
20 public further crimes. My -- one of the things I have to try to
21 do is find a way for you to not keep calling in bomb threats --

22 THE DEFENDANT: Yeah.

23 THE COURT: -- because I don't want ya to keep callin' in
24 bomb threats; society doesn't want you to keep callin' in --

25 THE DEFENDANT: Um-hum.

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1 THE COURT: -- bomb threats.

2 THE DEFENDANT: (Shrug.)

3 THE COURT: It's not good for you; it's not good for
4 anybody.

5 And I have to try to find a way to deter that. And, with
6 you, it's a little more challenging because you've indicated
7 numerous times that -- and, in fact, not just in this case but in
8 your prior cases -- not with me; with other judges -- that, you
9 know, you wanted to go back to prison. So --

10 THE DEFENDANT: Yeah, for the time --

11 THE COURT: -- that --

12 THE DEFENDANT: -- yeah.

13 THE COURT: -- it's kind of a unique situation that we
14 have here.

15 THE DEFENDANT: I did.

16 THE COURT: And I also recognize that you do have an
17 extensive criminal history that does involve a number of these,
18 you know, threats and false statements and actions geared towards
19 trying to get back into prison or not. So this is a relatively
20 unique situation that I'm dealing with.

21 And so I've considered all of those factors; everything
22 you said; everything counsel has said.

23 I have reviewed the charging document, the Plea
24 Agreement, my notes from the Plea Agreement, my very clear memory
25 from the plea hearing, the Presentence Investigation Report,

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1 obviously the intimate knowledge that I have of Mr. Schuett and
2 his situation because I have received so many pro se
3 communications from him --

4 THE DEFENDANT: Yeah.

5 THE COURT: -- all of which is in the record -- and I've
6 listened to and certainly taken to heart the comments by counsel
7 and the arguments by counsel and everything that Mr. Schuett had
8 to say here today.

9 And, Mr. Schuett, I want you to really understand: I do
10 hear you and I listened to you and I haven't ignored a single
11 thing that you have filed.

12 THE DEFENDANT: I appreciate that, ma'am.

13 THE COURT: And, you know, I continually deny the things
14 that you --

15 THE DEFENDANT: Yeah.

16 THE COURT: -- file on a pro se basis because you have a
17 lawyer who represents you and our rules don't let you also file
18 motions when she is able and perfectly qualified to decide whether
19 something should be filed or not in your case.

20 THE DEFENDANT: Yeah.

21 THE COURT: And we've talked about that a number of
22 times.

23 But I don't want you to feel in any way that I've ignored
24 you because I absolutely --

25 THE DEFENDANT: Oh, I don't --

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1 THE COURT: -- have not.

2 THE DEFENDANT: -- believe that, ma'am.

3 THE COURT: Okay.

4 THE DEFENDANT: I don't believe it. It's just -- you
5 know, like I say, everything was related in medical. It wasn't
6 anything to do with the case.

7 THE COURT: And we'll talk about that in a minute too
8 when I'm done with all the sentencing --

9 THE DEFENDANT: Uh-huh.

10 THE COURT: -- aspect of this.

11 But having considered all of that and the factors under
12 3553(a), particularly the need to afford --

13 (Attorney-client discussion.)

14 THE COURT: -- adequate deterrence to additional criminal
15 conduct and the need to protect the public from further crimes and
16 to recognize the seriousness of this crime but also to balance
17 that with the unique characteristics and situation of Mr. Schuett
18 who apparently feels that he's in a position where he's left with
19 no choice but to commit a crime like this in order to go back to
20 prison.

21 So please know I've considered absolutely anything and
22 everything in this case in deciding on the right sentence that I
23 think is appropriate here.

24 And, based on all of this, I find that a sentence of 75
25 months is sufficient but not greater than necessary to achieve the

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1 goals --

2 (Attorney-client discussion.)

3 THE COURT: -- and objectives of sentencing followed by a
4 3-year term of supervised release.

5 So, Mr. Schuett, you will have a probation officer that
6 you will get to know and who should able to assist you and help
7 you so you don't find yourself in the same situation again.

8 And I find that that 3-year term of supervised release is
9 also sufficient but not greater than necessary to achieve those
10 same goals and objectives and to really assist Mr. Schuett with
11 the transition back into society.

12 So, Mr. Schuett, there, of course, will be rules and
13 conditions that you have to follow to avoid going back to prison
14 after you get out. And the Probation office is gonna give you a
15 list of those in just a minute, but I'm going to go over with them
16 with you in the meantime.

17 If you want to follow along with me, you can find them in
18 the Presentence Investigation Report starting on page 34.

19 (Brief pause.)

20 THE COURT: At the bottom.

21 MS. LEVY: Yeah, we have it, Your Honor.

22 THE COURT: Oh, great. Thank you.

23 MS. LEVY: I'm sorry.

24 THE COURT: No problem.

25 MS. LEVY: I apologize.

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1 THE COURT: All right.

2 So, while on supervised release, you'll comply with the
3 standard conditions of supervision recommended by the Sentencing
4 Commission and also these conditions:

5 The first is you shall not commit -- and this kind of
6 goes without saying -- shall not commit another federal, state, or
7 local crime during your term of supervision.

8 There's two rules about illegal controlled substances:
9 one, you can't possess them and, second, you have to refrain from
10 any unlawful use of controlled substances. And you have to submit
11 to at least one drug test within 15 days of the commencement of
12 supervision and at least two periodic drug tests after that not to
13 exceed 104 annually. Revocation of supervised release is
14 mandatory for refusal to comply with the drug testing requirement
15 or for possessing illegal controlled substances.

16 You also shall submit to DNA collection and analysis as
17 directed by the probation officer.

18 You must submit your person, property, residence, place
19 of business, and vehicle under your control to a search by the
20 Probation office at a reasonable time and in a reasonable manner
21 based on reasonable suspicion of either contraband or evidence of
22 a violation of a condition of supervision and refusal to submit
23 may be grounds for revocation.

24 You also can't have -- you can't possess, have under your
25 control, or have access to any guns, firearms, explosive device,

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1 or other dangerous weapons as defined by federal, state, or local
2 law.

3 You must participate in and successfully complete a
4 health treatment program and that might include testing,
5 evaluation, or outpatient counseling as approved and directed by
6 the Probation office. And you need to refrain from the use and
7 possession of beer, wine, liquor, and other forms of intoxicants
8 while you're participating in this treatment. And you'll be
9 required to contribute to the cost of the treatment based on your
10 ability to pay as approved by the Probation office.

11 (Attorney-client discussion.)

12 THE COURT: They'll help you with all of this.

13 You also have to use your real name. You will be
14 prohibited from the use any of aliases, false dates of birth,
15 Social Security numbers, places of birth, or any other pertinent
16 demographic information.

17 And, finally, as soon as you get, you've got 3 days to
18 report to the Probation office. So you have to make sure you do
19 that. They are there. They have services. They have things to
20 help you out --

21 THE DEFENDANT: Right.

22 THE COURT: -- so that you can transition back.

23 I also would encourage you, very strongly, to start
24 communicating with Social Security before you get released. So
25 that, if that is what you are looking at as your method to survive

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1 on the outside, you need to make sure that you start that early so
2 that that process is intact when you get out and it's there for
3 you as a support system. Okay?

4 THE DEFENDANT: (Nods head.)

5 (Attorney-client discussion.)

6 THE COURT: Obviously that's not a condition. That was
7 just a recommendation.

8 Can we please provide Mr. Schuett with a copy of those
9 terms and conditions?

10 MS. ELWESS: Yes, Your Honor.

11 THE COURT: All right.

12 MS. LEVY: Your Honor, can I make a request for
13 placement?

14 THE COURT: Yes. Give me just a second.

15 (Brief pause.)

16 THE COURT: All right. And, with respect to all of those
17 --

18 (Attorney-client discussion.)

19 THE COURT: -- conditions I find they are reasonably
20 represented to the goals of deterrence, protection of the public,
21 or rehabilitation; they involve no --

22 (Attorney-client discussion.)

23 THE COURT: -- greater deprivation of liberty than is
24 reasonably necessary to achieve these goals; and that they are
25 consistent with any pertinent policy statements issued by the

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1 Sentencing Commission.

2 And the record will reflect that Mr. Schuett has been
3 provided with a written copy of these conditions.

4 The mandatory penalty assessment of a hundred dollars is
5 required by statute, it's hereby imposed, and it's due
6 immediately.

7 No fine will be imposed based on a demonstrated inability
8 to pay.

9 This is not a restitution or a forfeiture case.

10 Recommendations to a facility.

11 (Attorney-client discussion.)

12 MS. LEVY: Marianna, Florida.

13 THE COURT: Marianna, Florida.

14 MS. LEVY: That's correct, Your Honor.

15 THE COURT: Okay.

16 Mr. Schuett, have you done some research on that one?
17 You think they can handle your medical issues?

18 THE DEFENDANT: Yes, ma'am. It's secure Level 3 and it's
19 got a UNICOR that I used to -- I've worked that type of UNICOR
20 before.

21 THE COURT: Okay.

22 THE DEFENDANT: So it's -- and it's close by. I've got
23 some cousins livin' down there. So...

24 THE COURT: Great.

25 All right. Well, then I will place that recommendation

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1 in the record for Marianna, Florida, and certainly also highlight
2 for the Bureau of Prisons that Mr. Schuett has some significant
3 medical restrictions and conditions that need to be addressed and
4 cared for. So...

5 And you're a paraplegic; is that correct, sir?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: All right.

8 And I'll make sure that the record does reflect that as
9 well so that maybe that can help speed up the process. Um --

10 MS. LEVY: So one other thing. My -- I have explained to
11 my client that he will get credit for the time that he has been
12 in. But he asked that I specifically request that. So I am doing
13 so, Your Honor.

14 THE COURT: All right.

15 So the record -- you will. The Bureau of Prisons is the
16 one who calculates all --

17 THE DEFENDANT: Okay.

18 THE COURT: -- of that. I'll also place, just as a
19 belt-and-suspenders approach, a recommendation that the Bureau of
20 Prisons ensure that he does receive the time for credit -- credit
21 for time served.

22 Mr. Schuett, in your Plea Agreement, you waived your
23 rights to appeal your conviction and your sentence. Nevertheless,
24 there are some very limited appellate rights that cannot be
25 waived. To the extent that you wish to exercise any of these very

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1 limited retained appellate rights, I'm advising you that you have
2 14 days to file a Notice of Appeal.

3 THE DEFENDANT: Um-hum.

4 THE COURT: And, if you cannot afford an attorney to
5 represent you, one will be appointed.

6 And, if you cannot afford a transcript of the record in
7 this case, one will be prepared at the government's expense.

8 Do you understand all of that?

9 THE DEFENDANT: Yes, ma'am. I won't be seeking appeal.

10 THE COURT: I'm sorry?

11 THE DEFENDANT: I will not be seeking appeal.

12 THE COURT: Okay. Again, entirely your choice.

13 Is this a single-count Indictment? Oh, yes, because it
14 was a negotiated --

15 MR. SMITH: Yes, ma'am --

16 MS. LEVY: Plead to an --

17 MR. SMITH: -- it was an --

18 MS. LEVY: -- Information.

19 MR. SMITH: -- Information.

20 So the Government would move to dismiss the Indictment at
21 this point. Oh, no. Strike that. There wasn't an indictment.

22 THE COURT: It was --

23 MR. SMITH: So we're --

24 THE COURT: -- just a --

25 MR. SMITH: That's right.

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1 THE COURT: -- Criminal Information?

2 MR. SMITH: Yes, ma'am.

3 THE COURT: All right.

4 All right. There are a number of motions that are
5 pending. I just want to make sure I clear up the record on this.

6 I think motions one sixty -- Documents 164, 167, and 168:
7 164 is a Motion for Reassignment of Counsel, motion --
8 Document 167 is a Motion to Recuse me as the judge; and
9 Document 168 is another Petition for Writ of Habeas Corpus.

10 All of these were filed by Mr. Schuett personally, not by
11 his counsel. And so I'm going to deny all of these under Local
12 Rule IA 10-6(a) that states that a party who has appeared by
13 counsel cannot while represented appear or act in his own case.

14 And Mr. Schuett and I have discussed this repeatedly.
15 And I have reminded him of this in Documents 28, 38, 54, 58, 85,
16 91, 141, 152, 153, and 169.

17 And I've also --

18 (Attorney-client discussion.)

19 THE COURT: -- explained that habeas relief is not --
20 (Attorney-client discussion.)

21 THE COURT: -- available in a criminal prosecution. I
22 explained that in Documents 116, 153 --

23 (Attorney-client discussion.)

24 THE COURT: -- and 169. And so I also deny the latest
25 habeas petition, which was Document 168, on that basis as well.

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1 So I think that that resolves any pending --

2 THE DEFENDANT: Uh, ma'am --

3 THE COURT: -- motions.

4 THE DEFENDANT: -- there was one other one that you did
5 grant me a limited -- a -- I don't know what it was. It had
6 somethin' to do with the immanent danger I filed against CCA,
7 about the medical thing up there. You give me -- you said I could
8 file some kind of a -- it was in one of the -- in fact, I got the
9 order, I think it was, on the 27th of March.

10 THE COURT: Was it in this case or one of your other
11 cases?

12 THE DEFENDANT: Um...

13 THE COURT: It might have been --

14 THE DEFENDANT: No.

15 THE COURT: -- in one of --

16 THE DEFENDANT: I think --

17 THE COURT: -- your civil --

18 THE DEFENDANT: -- it was --

19 THE COURT: -- cases?

20 THE DEFENDANT: -- 16- -- 1645, I think, was the -- it
21 was on six -- uh, two --

22 THE COURT: Yeah. It's in the civil?

23 COURTROOM ADMINISTRATOR: Civil case.

24 THE COURT: It's in the --

25 THE DEFENDANT: Yeah, 2:14-1645 --

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1 THE COURT: Okay.

2 THE DEFENDANT: -- you said I could file a -- some kind
3 of a -- for, um, uh, a petition for -- I think for an injunction
4 or somethin' I think like that. I'm not too sure.

5 THE COURT: An amended complaint or something like that?

6 THE DEFENDANT: Yeah. It was related to 1645, that
7 Complaint that you did dismiss, but you didn't give me
8 authorization where I could file a, uh --

9 THE COURT: I see. All right.

10 So that is in one of the pending civil cases that you --

11 THE DEFENDANT: Right.

12 THE COURT: -- have.

13 So I think with respect to -- and I'll take a look at
14 that -- but I think -- with respect to the record in this criminal
15 case, I think that resolves all of the pending motions at this
16 point.

17 Donna, does that --

18 THE DEFENDANT: Yes, ma'am --

19 THE COURT: -- appear --

20 THE DEFENDANT: -- it does.

21 THE COURT: -- to be the case?

22 COURTRoom ADMINISTRATOR: Yes, Your Honor, it does.

23 THE DEFENDANT: Except some of my medical issues, current
24 ones anyhow.

25 THE COURT: And I see that we have Marshal Carpenter here

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1 today. I just wanted to see if there was something that we
2 want -- we needed -- anything else that we need to address?

3 MR. SMITH: I don't --

4 THE DEFENDANT: Yeah.

5 MR. SMITH: -- believe so, ma'am. I had just asked --

6 THE DEFENDANT: Get me --

7 MR. SMITH: -- Marshal --

8 THE DEFENDANT: -- outta --

9 MR. SMITH: -- Carpenter --

10 THE DEFENDANT: -- here.

11 MR. SMITH: -- to come in case there were some questions
12 that Mr. Schuett had or --

13 THE DEFENDANT: Get me outta here...

14 MR. SMITH: -- questions that the Court --

15 (Attorney-client discussion.)

16 MR. SMITH: -- may have had based on statements that
17 Mr. Schuett made. But I don't see any need for him to say
18 anything at this point.

19 MS. LEVY: No. Thank you, Your Honor.

20 THE COURT: All right.

21 We don't need anything further then, Ms. Levy?

22 MS. LEVY: No. Thank you, Your Honor.

23 THE COURT: All right. Thank you very much.

24 MS. LEVY: Thank you.

25 THE COURT: All right. We are adjourned.

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1 Mr. Schuett, I wish you the best of luck, sir. Okay?

2 THE DEFENDANT: Thank you.

3 THE COURT: You take care of yourself.

4 THE DEFENDANT: Um-hum.

5 (Attorney-client discussion.)

6 (Proceedings concluded at 11:40 a.m.)

7 --oo--

8 COURT REPORTER'S CERTIFICATE

9
10 I, FELICIA RENE ZABIN, Official Court Reporter, United
11 States District Court, District of Nevada, Las Vegas, Nevada, do
12 hereby certify that pursuant to Section 753, Title 28, United
13 States Code, the foregoing is a true, complete, and correct
14 transcript of the proceedings had in connection with the
15 above-entitled matter.

16

17 DATED: July 3, 2015

18 /s/ **Felicia Rene Zabin**

19 FELICIA RENE ZABIN, RPR, CCR NO. 478

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